

become a member of the Selected Reserve and which VA determines is not service connected when the veteran applies for benefits under 38 U.S.C. chapter 30 and—

(i) Either the veteran would be eligible for basic educational assistance under that chapter only if he or she was discharged from the Selected Reserve for a service-connected disability, or for a medical condition which preexisted the veteran's having become a member of the Selected Reserve and which VA finds is not service connected, or

(ii) The veteran is entitled to basic educational assistance and would be entitled to receive it at the rates stated in §21.7136(a) or §21.7137(a) of this chapter only if he or she was discharged from the Selected Reserve for a service-connected disability or for a medical condition which preexisted the veteran's having become a member of the Selected Reserve and which VA finds is not service connected.

(3) A determination is required as to whether a reservist has been unable to pursue a program of education due to a disability which has been incurred in or aggravated by service in the Selected Reserve when—

(i) The reservist is otherwise entitled to educational assistance under 10 U.S.C. chapter 1606, and

(ii) He or she applies for an extension of his or her eligibility period.

(4) The determinations required by paragraphs (c)(1) through (c)(3) of this section are subject to the presumptions of incurrence under §3.304(b) and aggravation under §3.306 (a) and (c) of this part, based on service rendered after May 7, 1975.

(Authority: 38 U.S.C. 3011(a)(1)(A)(ii), 3012(b)(1), 3202(1)(A), 10 U.S.C. 16133(b))

[38 FR 871, Jan. 5, 1973, as amended at 42 FR 22869, May 5, 1977; 50 FR 53315, Dec. 31, 1985; 51 FR 1510, Jan. 14, 1986; 55 FR 25974, June 26, 1990; 61 FR 67950, Dec. 26, 1996]

**§3.316 Claims based on chronic effects of exposure to mustard gas and Lewisite.**

(a) Except as provided in paragraph (b) of this section, exposure to the specified vesicant agents during active military service under the circumstances described below together

with the subsequent development of any of the indicated conditions is sufficient to establish service connection for that condition:

(1) Full-body exposure to nitrogen or sulfur mustard during active military service together with the subsequent development of chronic conjunctivitis, keratitis, corneal opacities, scar formation, or the following cancers: Nasopharyngeal; laryngeal; lung (except mesothelioma); or squamous cell carcinoma of the skin.

(2) Full-body exposure to nitrogen or sulfur mustard or Lewisite during active military service together with the subsequent development of a chronic form of laryngitis, bronchitis, emphysema, asthma or chronic obstructive pulmonary disease.

(3) Full-body exposure to nitrogen mustard during active military service together with the subsequent development of acute nonlymphocytic leukemia.

(b) Service connection will not be established under this section if the claimed condition is due to the veteran's own willful misconduct (See §3.301(c)) or there is affirmative evidence that establishes a nonservice-related supervening condition or event as the cause of the claimed condition (See §3.303).

[59 FR 42499, Aug. 18, 1994]

**§3.317 Compensation for certain disabilities due to undiagnosed illnesses.**

(a)(1) Except as provided in paragraph (c) of this section, VA shall pay compensation in accordance with chapter 11 of title 38, United States Code, to a Persian Gulf veteran who exhibits objective indications of chronic disability resulting from an illness or combination of illnesses manifested by one or more signs or symptoms such as those listed in paragraph (b) of this section, provided that such disability:

(i) Became manifest either during active military, naval, or air service in the Southwest Asia theater of operations during the Persian Gulf War, or to a degree of 10 percent or more not later than December 31, 2001; and

(ii) By history, physical examination, and laboratory tests cannot be attributed to any known clinical diagnosis.